

1
2
3
4
5
6
7
8
9

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 PAUL TUILAEPA,

No. C 09-2954 WHA (PR)

11 Plaintiff,

ORDER OF DISMISSAL

12 v.

13 ROBERT AYERS, JR.; MAX S.
14 LEMON; D. A. DACANAY; R. W.
15 FOX; B. GRUNDY; D. SCHLOSSER;
16 A. MINCEY; B. EBERT; D.
COLEMAN; R. S. WONG; C.
PALMER; J. M. PICKETT; A. COTA;
and J. GUTHRIE,

17 Defendants.

18 _____/

19 **INTRODUCTION**

20 Plaintiff, an inmate at San Quentin State Prison, filed this case in Marin County
21 Superior Court, and it was removed to this court by defendants. The complaint was dismissed
22 with leave to amend, and plaintiff filed a timely amended complaint.

23 **ANALYSIS**

24 In the amended complaint, plaintiff claims that a rule at San Quentin allowing a
25 procedure called “property control,” in which an inmate is deprived of certain property items
26 for a fixed period of time as a form of discipline, violates his constitutional rights and state law.
27 These claims are duplicative of the claims challenging the property control procedures at San
28 Quentin that plaintiff raised in an earlier case filed in this court, which claims were dismissed

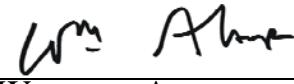
1 for failure to state a claim upon which relief could be granted. *See Tuilaepa v. Woodford*, No.
2 03-2926 PJH (PR (N.D. Cal. March 3, 2005) (order granting defendants' motion to dismiss).
3 Duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal
4 under 28 U.S.C. 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988).
5 This is true even where, as here, the new complaint repeats the same claims but against new
6 defendants. *Ibid.* "Dismissal of the duplicative lawsuit, more so than the issuance of a stay or
7 the enjoinder of proceedings, promotes judicial economy and the 'comprehensive disposition
8 of litigation.'" *Adams v. California*, 487 F.3d 684, 692-93, 694 (9th Cir. 2007) (citation
9 omitted). As plaintiff's claims are duplicative of claims that he raised in a prior action and that
10 were dismissed for failure to state a claim upon which relief can be granted, the instant action
11 will be dismissed.

12 **CONCLUSION**

13 For the foregoing reasons, this case is **DISMISSED**. The clerk shall close the file.

14 **IT IS SO ORDERED.**

15 Dated: October 13, 2009.

16 
17 WILLIAM ALSUP
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28